



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA-RCRA-2021-0127; FRL-10021-26-Region 9]

Research, Development and Demonstration (RD&D) Rule for the Salt River Pima-Maricopa Indian Community Landfill RD&D Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection (EPA) is taking direct final action to approve revisions to the site-specific Research, Development and Demonstration rule for the Salt River Pima-Maricopa Indian Community (SRPMIC), Salt River Landfill Research, Development, and Demonstration Project in order to increase the maximum term for the site-specific rule from 12 to 21 years. EPA is also revising the site-specific rule to reflect a change in the division title for U.S. EPA Region 9, from the Waste Management Division to the Land, Chemicals and Redevelopment Division.

DATES: This rule is effective on **[Insert date 60 days after date of publication in the *Federal Register*]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days after date of publication in the *Federal Register*]**. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-R9-2021-0127** at <http://www.regulations.gov>, or via email to R9LandSubmit@epa.gov. Due to COVID-19, we are not providing facsimile or regular mail options, which are not viable at this time. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit

electronically any information considered confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For EPA's full public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Steve Wall, EPA Region IX, (415) 972-3381, wall.steve@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” or “our” refer to the EPA.

I. Why is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment because the revisions to the site-specific rule merely conform the rule to the national rule regarding the total length of time that Research, Development and Demonstration (RD&D) projects may be permitted. Moreover, the 2016 RD&D rule was subjected to public notice and comment prior to promulgation. Also, the existing 12-year maximum term for the Salt River Landfill's operation as a bioreactor ends in March 2021, and further delay in extending the total term of the RD&D project would potentially result in economic and environmental harm, contrary to the mission of the Agency. Thus, EPA has determined that there is good cause for issuing this direct rule final. However, in the “Proposed Rules” section of this issue of the **Federal Register**, we are publishing a separate document that will serve as the proposed rule to increase the maximum term for the site-specific

rule from 12 to 21 years and to reflect a change in the division title for U.S. EPA Region 9, from the Waste Management Division to the Land, Chemicals and Redevelopment Division if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Legal Authority for this Action

Under sections 1008, 2002, 4004, and 4010 of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA established revised minimum Federal criteria for Municipal Solid Waste Landfills (MSWLFs). Under RCRA section 4005, states are to develop permit programs for facilities that may receive household hazardous waste or waste from conditionally exempt small quantity generators, and EPA determines whether the program is adequate to ensure that facilities will comply with the revised criteria.

The MSWLF criteria are in the Code of Federal Regulations at 40 CFR part 258. These regulations are self-implementing and apply directly to owners and operators of MSWLFs. For many of these criteria, 40 CFR part 258 includes a flexible performance standard as an alternative to the self-implementing regulation; its use requires approval by the Director of an EPA-approved state.

Since EPA's approval of a state program does not extend to Indian country, owners and operators of MSWLF units located in Indian country cannot take advantage of the flexibilities available to those facilities outside Indian country. However, the EPA has the authority under sections 2002, 4004, and 4010 of RCRA to promulgate site-specific rules that may provide for use of alternative standards. See Yankton Sioux Tribe v. EPA, 950 F. Supp. 1471 (D.S.D. 1996);

Backcountry Against Dumps v. EPA, 100 F.3d 147 (D.C. Cir. 1996). EPA has developed draft guidance on preparing a site-specific request to provide flexibility to owners or operators of MSWLFs in Indian country (Site-Specific Flexibility Requests for Municipal Solid Waste Landfills in Indian Country Draft Guidance, EPA530-R-97-016, August 1997).

In 2004, EPA issued a final rule at 40 CFR 258.4 amending the MSWLF criteria to allow for RD&D permits. 69 FR 13242, March 22, 2004. That rule allows for variances from specified criteria for a limited time. Specifically, the rule allows for the Director of an approved state to issue a time-limited RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to use innovative and new methods which vary from either or both of the following: (1) the run-on control systems at 40 CFR 258.26(a)(1); and/or (2) the liquids restrictions at 40 CFR 258.28(a), provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-centimeter depth of leachate on the liner. The rule also allows for the issuance of a time-limited RD&D permit for which innovative and new methods that vary from the final cover criteria at 40 CFR 258.60(a)(1) and (2) and (b)(1) are proposed for use, provided a demonstration is made that the infiltration of liquid through the alternative cover system will not cause contamination to groundwater or surface water, or cause leachate depth on the liner to exceed 30 centimeters. RD&D permits must include such terms and conditions at least as protective as the criteria for MSWLFs to assure protection of human health and the environment. EPA's RD&D rule stated that RD&D facilities in Indian country could be approved in a site-specific rule.

The 2004 RD&D rule included time limits whereby an RD&D permit cannot exceed three years and a renewal of an RD&D permit cannot exceed three years. Although multiple renewals of an RD&D permit can be issued, the 2004 RD&D rule included a total term for an RD&D permit, including renewals, of up to twelve years. In 2016, EPA revised the maximum permit term for MSWLF units operating under the RD&D permit program to allow the Director of an approved State to increase the number of permit renewals to six, for a total permit term of

up to 21 years. 81 FR 28720, May 10, 2016.

In 2009, EPA approved an RD&D project at the Salt River Landfill, promulgating a site-specific rule at 40 CFR 258.42(a). 74 FR 11677, March 19, 2009. Periodic three-year extensions have allowed the continued operation of the Salt River Landfill as a bioreactor to the present. However, the 12-year term in the current rule, issued March 19, 2009, expires on March 19, 2021.

In addition, since the promulgation of the 2009 site-specific rule for the Salt River Landfill, the division title for U.S. EPA Region 9, Waste Management Division has been changed to the Land, Chemicals and Redevelopment Division.

A. What action is the Agency taking?

EPA is taking direct final action to revise 40 CFR 258.42(a) to allow operation of the Salt River Landfill consistent with the RD&D rule for a total of 21 years. However, a renewal of this authority must continue to be sought every three years. Each renewal request is subject to public notice and comment. No renewal may be for greater than three years and the overall period of operation may not exceed 21 years.

This action revises the overall term of the rule pertaining to SRPMIC's site-specific flexibility request to recirculate leachate and landfill gas condensate and add storm water and groundwater to the below grade portions of areas of the landfill known as Phases IIIB and IVA to increase the moisture content of the waste mass in these phases.

EPA is also revising its site-specific rule to reflect a change in the division title for U.S. EPA Region 9, from the Waste Management Division to the Land, Chemicals and Redevelopment Division.

B. What are the anticipated effects and benefits of this action?

The 2016 revision to the RD&D rule at 40 CFR 258.4(e)(1) articulated the anticipated effect of extending the overall period of operations of these units from 12 to 21 years. 81 FR at 28721. Based on that rulemaking, EPA has determined that the extension of the site-specific

rule's total term will provide EPA the ability to issue renewals to the existing authority to operate this RD&D unit pursuant to this program for up to 21 years instead of 12 years. During this time, the EPA will continue to evaluate data from this facility. The SRPMIC is not expected to incur any significant costs due to this direct final rule. Based on the 2016 rulemaking, the annual costs for ongoing recordkeeping and reporting requirements are estimated at \$2,410 per facility and seeking periodic three-year extensions to operate an RD&D unit remains voluntary. This action does not impose any new regulatory burden. This action allows EPA to increase the number of extensions of the operational period for the Salt River Landfill's RD&D unit if the tribal owner/operator continues to choose to participate in this research program. Increasing the possible number of extensions of the RD&D unit's operational term may benefit the tribal owner/operator of RD&D units, assuming a projected increase in the rate of return for 21 years compared to 12 years, based on the findings in EPA's 2016 rulemaking. 81 FR at 28721.

The 2016 final rule also indicated that increasing the possible number of extensions of RD&D permit terms was expected to provide more time for the EPA to collect additional data on the approaches being taken under these RD&D permits. *Id.* With respect to the continued operation of the Salt River Landfill, the following potential benefits set forth in the 2016 rule's preamble are expected: increased potential for revenue from the sale of landfill gas for use as a renewable source of fuel, accelerated production and capture of landfill gas for potential use as a renewable fuel, and accelerated stabilization and corresponding decreased post-closure care activities for facilities due to the accelerated decomposition of waste.

III. Statutory and Executive Order Reviews

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. 36 CFR part 800. While EPA consulted with the SRPMIC, as well as the Ak-Chin Indian Community, the Fort McDowell Yavapai Nation, the Gila River Indian Community, the Hopi Tribe, the

Pascua Yaqui Tribe, the Tohono O'odham Nation, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe on the original site-specific flexibility rulemaking in 2009 (*see* 74 FR at 11679), EPA finds that this direct final action to extend the existing 12-year term of the authority to operate a bioreactor in accordance with EPA's RD&D Program to a 21-year term has "no potential to cause effects" on historic properties within the meaning of Section 106 of the NHPA.

In compliance with the Endangered Species Act, 16 U.S.C. 1536 *et seq.*, EPA performed a biological assessment for the project site. No known threatened, endangered or candidate species or their habitat exist on the site. Additionally, there are no ground disturbing surface activities associated with EPA's approval of an increase to the maximum period the Salt River Landfill RD&D project can operate units as bioreactor units. No impacts to listed species that may occur in in project area are anticipated.

Under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB).

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only.

Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA.

Because this rule will affect only a particular facility, this direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132,

“Federalism,” (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

This rule also is not subject to Executive Order 13045, “Protection of Children From Environmental Health Risks and Safety Risks,” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is EPA's conservative analysis of the potential risks posed by SRPMIC's RD&D Program proposal and the controls and standards set forth in the application and incorporated by reference into the original site-specific rule at 40 CFR 258.42(a).

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

As required by section 3 of Executive Order 12988, “Civil Justice Reform,” (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Executive Order 13175, entitled “Consultation and Coordination With Indian Tribal Governments,” (65 FR 67249, November 9, 2000), calls for EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” EPA has concluded that this action may have tribal implications because it is directly applicable to the owner and operator of the landfill, which is currently the SRPMIC. However, this direct final rule will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. This direct final rule to revise the maximum total term from up to 12 years to up to 21 years will affect only the SRPMIC's operation of their landfill on their own land.

On March 10, 2021, EPA offered consultation to the SRPMIC so as to give the Tribe a meaningful and timely opportunity to provide input into the extension of the total term of the rule from 12 years to 21 years. To the extent that SRPMIC accepts EPA's offer to consult on this action, the Agency will endeavor to undertake such consultation during the 30-day public comment period for this direct final rule.

With respect to the type of flexibility being afforded to SRPMIC under this direct final rule, EO 13175 does provide for agencies to review applications for flexibility "with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate." In formulating this direct final rule, the Region has been guided by the fundamental principles set forth in EO 13175 and has granted the SRPMIC the "maximum administrative discretion possible" within the standards set forth under the RD&D rule in accordance with EO 13175.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The technical standards included in the original site-specific flexibility request were proposed by SRPMIC. Given EPA's obligations under EO 13175 (see above), the Agency applied the standards established by the Tribe. In addition, the Agency considered the Interstate Technology and Regulatory Council's February 2006 technical and regulatory guideline "Characterization, Design, Construction, and Monitoring of Bioreactor Landfills." Nothing about this analysis has changed since the 2009 site-specific rule was promulgated nor does the extension of the total possible term of the RD&D unit's operations in accordance with the site-specific rule from 12 years to 21 years affect this analysis.

Congressional Review Act (CRA). This action is not subject to the CRA because the term “rule” as it is used in the CRA does not include “any rule of particular applicability,” such as a site-specific rule. See, 5 U.S.C. Section 804(3)(A).

Environmental Justice—Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and the accompanying presidential memorandum advising Federal agencies to identify and address, whenever feasible, disproportionately high and adverse human health or environmental effects on minority communities or low-income communities. The action will not adversely impact minorities or low-income communities.

Authority: Sections 1008, 2002, 4004, and 4010 of the Solid Waste Disposal Act, as amended, 42 U.S.C. Sections 6907, 6912, 6944, and 6949a. Delegation 8-54, Site-Specific Rules for Flexibility from Owners/Operators of Municipal Solid Waste Landfills (MSWLFs) in Indian Country, November 24, 2010. Regional Delegation R9-8-54, October 10, 2014.

List of Subjects in 40 CFR Part 258

Environmental protection, Municipal landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: March 26, 2021.

Steven Barhite,
Acting Director,
Land, Chemicals and Redevelopment Division,
Region IX.

For the reasons set forth in the preamble, 40 CFR part 258 is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c), 6981(a).

Subpart D – Design Criteria

2. Revise § 258.42(a)(5) through (10) to read as follows:

§ 258.42 Approval of site-specific flexibility requests in Indian country.

(a) * * *

(5) The owner and/or operator shall submit reports to the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 as specified in “Research, Development, and Demonstration Permit Application Salt River Landfill,” dated September 24, 2007 and amended on April 8, 2008, including an annual report showing whether and to what extent the site is progressing in attaining project goals. The annual report will also include a summary of all monitoring and testing results, as specified in the application.

(6) The owner and/or operator may not operate the facility pursuant to the authority granted by this section if there is any deviation from the terms, conditions, and requirements of this section unless the operation of the facility will continue to conform to the standards set forth in § 258.4 and the owner and/or operator has obtained the prior written approval of the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 or the Director’s designee to implement corrective measures or otherwise operate the facility subject to such deviation. The Director of the Land, Chemicals and Redevelopment Division or designee shall provide an opportunity for the public to comment on any significant deviation prior to providing written approval of the deviation.

(7) Paragraphs (a)(2), (3), (5), (6), and (9) of this section will terminate on March 19, 2024, unless the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 or the Director's designee renews this authority in writing. Any such renewal may extend the authority granted under paragraphs (a)(2), (3), (5), (6), and (9) of this section for up to an additional three years, and multiple renewals (up to a total of 21 years from March 19, 2009) may be provided. The Director of the Land, Chemicals and Redevelopment Division or designee shall provide an opportunity for the public to comment on any renewal request prior to providing written approval or disapproval of such request.

(8) In no event will the provisions of paragraph (a)(2), (3), (5), (6), or (9) of this section remain in effect after March 19, 2030, 21 years after the March 19, 2009 date of publication of the site-specific rule in this section. Upon termination of paragraphs (a)(2), (3), (5), (6), and (9) of this section, and except with respect to paragraphs (a)(1) and (4) of this section, the owner and/or operator shall return to compliance with the regulatory requirements which would have been in effect absent the flexibility provided through the site-specific rule in this section.

(9) In seeking any renewal of the authority granted under or other requirements of paragraphs (a)(2), (3), (5), and (6) of this section, the owner and/or operator shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other requirements that the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 or the Director's designee has determined are necessary for the approval of any renewal and has communicated in writing to the owner and operator.

(10) The owner and/or operator's authority to operate the landfill in accordance with paragraphs (a)(2), (3), (5), (6), and (9) of this section shall terminate if the Director of the Land, Chemicals and Redevelopment Division at EPA Region 9 or the Director's designee determines that the overall goals of the project are not being attained, including protection of human health or the

environment. Any such determination shall be communicated in writing to the owner and operator.

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